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09/904,547	07/16/2001	John J. Waldmann	WALD 082C1	6008

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EXAMINER

LOVERING, RICHARD D

ART UNIT PAPER NUMBER

1712

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DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/904,547

Applicant(s)

WALDMANN

Examiner

LOVERING

Group Art Unit

1712

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on APR. 3, 2003
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 14-33 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 31 AND 32 is/are allowed.
- ☒ Claim(s) 14-17, 19-21, 25-27, 30 AND 33 is/are rejected.
- ☒ Claim(s) 18, 22-24, 28 AND 29 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claim 30 is rejected under 35 U.S.C. § 102(b) as being anticipated by Perman 5,071,587 of record, esp. Examples 6 and 7, noting also the Abstract. While Perman doesn't specifically state that his tablets remove nitrate, this property would be inherent or implicit in the tablets of Perman, since applicant herein discloses and teaches that only two of his three ingredients are essential. Note that claim 30 herein doesn't require the presence of highly cross-linked carbohydrate polymer.

3. Applicant's arguments filed April 3, 2003 have been fully considered but they are not deemed to be persuasive. Claim 30 in "comprising" doesn't exclude the presence of a biocide. Also, it is evident from Perman (column 5, lines 22-24) that he doesn't require a biocide in his compositions. Examples 6 and 7 of Perman don't contain pH controlling salts.

4. Claims 14-17, 19-21, 25-27 and 33 are rejected under 35 U.S.C. § 102(b) as being anticipated by Meadows 2,825,655, esp. Examples 2, 6 and 7. While Meadows doesn't state that his compositions are for nitrate removal and for treatment of waste water streams, it is well-settled that the recitation of a new or different intended use doesn't render an old composition new or patentable. See In re Thuau, 1943 C.D. 390; 554 O.G. 14; and In re Zierden, 411 F. 2d 1325; 162 USPQ 102. In claim 16 herein,

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"xanthate" reads on the cellulose xanthate of Meadows, and the language in claims 17, 20, 21 and 25-27 modifying the organically modified clay don't require that the first component of the claimed composition be an organically modified clay.

5. Claims 14, 17 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14, 17 and 20 recite Markush groups (as to "at least one moiety"; "amine modified clay"; and "at least one cellulose component", resp.) which are not considered proper for the reasons that they are indefinite as to scope and incomplete as to their memberships in lacking --consisting-- (claims 14 and 17) or in using "comprising" instead of --consisting of-- (claim 20).

6. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 25 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one

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skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The expression "wherein Y can be any organic or inorganic moiety . . . hydroxy acid moiety" lacks antecedent basis and support in the original disclosure and is regarded as new matter.

8. Applicant should correct the spelling errors in claim 16, line 7 and claim 17, line 6.

9. Claims 18, 22-24, 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the compositions of claims 18, 22-24, 28, 29, 31 and 32 herein.

11. The remaining references listed on the attached Form PTO-892 are cumulative to the references applied herein, and/or further show the state of the art.

12. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a

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final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
June 5, 2003

*Richard D. Lovering*  
RICHARD D. LOVERING  
PRIMARY EXAMINER  
GROUP ~~1200~~ 1700